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14 THE LAGUNITAS BREWING CO.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17

18 THE LAGUNITAS BREWING CO.,  
19 Plaintiff,  
20  
21 vs.  
22 SIERRA NEVADA BREWING CO.,  
23 Defendant.

Case No. 15-cv-153\_\_\_\_\_

**DECLARATION OF TONY MAGEE**

24 I, Tony Magee, declare as follows:

25 **I. Introduction**

26 1. I make this declaration in support of Lagunitas' Motion for a Temporary  
27 Restraining Order and for a Preliminary Injunction. The statements herein are based on my  
28

1 personal knowledge, observations, and experience, unless otherwise noted. As such, I am  
2 qualified to testify to the matters stated below and, if necessary, I can testify to the matters stated  
3 below.

4 2. I am the Founder and CEO of The Lagunitas Brewing Co. (“Lagunitas” or “the  
5 Company”), which I began in 1993. Since it was founded in 1993, Lagunitas has strived to  
6 consistently produce top-quality beer. It has become one of the fastest growing craft breweries in  
7 the United States, and while Lagunitas produces a variety of beers, it is most recognized for its  
8 ales. The most notable, widely-recognized, and longest-selling of these ales is its India Pale Ale,  
9 sold as the Lagunitas IPA.

10 3. In my capacity as CEO of Lagunitas, I routinely interact with the purchasers of  
11 Lagunitas products, including the Lagunitas IPA discussed above. I have knowledge of the  
12 criteria the customers utilize in purchasing Lagunitas products, as well as the product nuances that  
13 influence their purchasing decisions. I have knowledge of the factors and considerations these  
14 individuals use when comparing products.

15 4. I also interact with a wide variety of Lagunitas employees, including employees  
16 who focus on brewing, marketing, and sales of the products. I design all of the Lagunitas product  
17 labels and packaging on my laptop.

18 5. In 1993, when Lagunitas began, we had distribution only in California. By 1997,  
19 we were distributing our flagship IPA in Maryland and Oregon as well. Today, we distribute in  
20 44 states in the U.S. and 3 countries outside of the U.S. Besides our original brewery in  
21 Petaluma, we recently opened a second production facility in Chicago, Illinois.

22 6. In 2014, we will have produced about 640,000 barrels of beer, 58% of which is the  
23 flagship Lagunitas IPA. In 2015, we expect production to be 850,000 barrels, still with  
24 approximately 58% being the Lagunitas IPA. This extraordinary growth makes Lagunitas, which  
25 does not do “collaborations” with other brewers, and especially its flagship Lagunitas IPA, a  
26 target for competitors.

27 7. Craft beers, to my knowledge, represent approximately 9% of the total U.S. beer  
28 market.

1  
2 **II. The Lagunitas IPA**

3 8. The Lagunitas IPA was the Company's first seasonal beer and dates back to  
4 1995. Since then, the Lagunitas IPA has become the Company's flagship beer. It is now  
5 available year-round and has been the top-selling India Pale Ale in California for the past  
6 decade—and one of the best-selling India Pale Ales in the nation. In addition to brewing a  
7 distinguishable beer, much of the Lagunitas IPA's success can be attributed to its branding, using  
8 the iconic "IPA" family of trademarks. The Lagunitas IPA brand has become well-known and  
9 well-recognized as signifying Lagunitas, in the craft brew industry, the alcoholic beverage  
10 industry generally, and among consumers of beer and other alcoholic beverages.

11 9. Lagunitas has invested substantial amounts of time and millions of dollars in  
12 promoting the Lagunitas IPA brand with the Lagunitas "IPA" family of trademarks. Lagunitas is  
13 unique among many of its competitors in that I design the beer labels and packaging, and I strive  
14 to instill personality into each of the beer recipes and the corresponding labels and packaging—  
15 showcasing the individuality of each product. As a result of our efforts over almost 20 years of  
16 continuous use, the Lagunitas brands, especially the Lagunitas IPA brand and its trademarks,  
17 have gained an excellent reputation and a high degree of recognition among the beer-consuming  
18 public. Today, the public recognizes the Lagunitas "IPA" Family of Trademarks and identifies  
19 them with the Lagunitas IPA brand exclusively.

20 10. For nearly twenty years, the Lagunitas "IPA" has been using the all-capital, large,  
21 bold "IPA" lettering, and the Lagunitas "IPA" Family of Trademarks has become well-known  
22 and well-recognized in the craft brew industry, and in the alcoholic beverage industry, generally,  
23 as associated with and signifying Lagunitas and the Lagunitas IPA. The unique "IPA" lettering  
24 used in the Lagunitas "IPA" Family of Marks has a distinctive serif font, and distinctive kerning,  
25 or letter spacing, between the "P" and the "A", and distinctive elimination of any periods between  
26 the letters. In addition, Lagunitas is well-known for using its distinctive "IPA" lettering in a  
27 manner that it is the center and focal point of the overall design. The "IPA" lettering also has an  
28 aged or weathered look, with uneven areas on each of the letters. The overall effect of these

factors (the large, all-capital, bold, black lettering style, the placement with respect to other wording and design elements, and the weathered look) creates a unique, iconic design that is associated with and signifies Lagunitas, and its associated reputation for excellence, in the craft brew industry and among consumers. And while some other breweries have adopted the abbreviation “IPA” in describing their India Pale Ales, on information and belief, Lagunitas was the first commercial brewery to do so—when the beer was first sold, consumers sometimes sounded out the letters not realizing that “IPA” was an abbreviation, asking for an “eeh pah” beer. But only the Lagunitas IPA bears the unique “IPA” lettering and is marketed and sold with the distinctive Lagunitas “IPA” Family of Trademarks.

11. Lagunitas is the owner of at least four United States federal trademark registrations directed specifically to the Lagunitas “IPA” mark used in labeling and packaging in connection with the sale of the Lagunitas IPA. Lagunitas first introduced the core of this iconic design to the marketplace in 1995. Indeed, since launching the Lagunitas IPA product line, Lagunitas has invested substantial amounts of time and tens of millions of dollars in promoting its IPA brand under its iconic Lagunitas “IPA” Family of Trademarks, including registered trademarks and approved applications, as represented below:



Figure 1. U.S. Registration No. 3,401,147



Figure 2. U.S. Registration No. 4,457,914



Figure 3. U.S. Registration No. 4,457,912



Figure 4. U.S. Registration No. 4,457,906



Figure 5. U.S. Serial No. 86136177

Figure 6. U.S. Serial No. 86136181

12. Lagunitas advertises its flagship IPA beer using these trademarks together. Similar to the Lagunitas “IPA” Family of Trademarks, I also have designed labels and packaging for the Lagunitas “PILS” ale and “PALE” ale brands in the same bold, graphic style as the Lagunitas “IPA” brand, and those marks also are routinely advertised along with the “IPA” Family of Trademarks. (See Ex. 1, photo of tap handles at Lagunitas brewery.) Lagunitas also has federal trademark registrations for those designs.

13. While Lagunitas values the input of its customers and fans, and of craft brewing industry personnel, Lagunitas does not collaborate with other brewers in order to maintain the quality and consistency for which it has become known.

### **III. The Craft Beer Industry**

14. As previously stated, I have worked in the craft beer industry for more than 20 years.

15. Consumers purchase beer either at “on-premises” retailers, or “licensees,” such as restaurants and bars, where they consume the beer on-site, or at “off-premises” licensees, where they purchase package products to enjoy elsewhere. At on-premises licensees, consumers generally will view bottles of beer or tap handles from several feet away, often in dimmed lighting. At off-premises licensees, consumers will view 6-packs, 12-packs, and, occasionally, individual bottles, either in a crowded refrigerated cooler or on a crowded shelf, often for only a few seconds and from several feet away before reaching the product. At both on-premises and

off-premises retailers, beers of the same style, i.e. all India Pale Ales, are often sold side-by-side. I specifically designed the Lagunitas “IPA” labels and packaging to differentiate the Lagunitas “IPA” brand from other India Pale Ales.

#### IV. Sierra Nevada Brewing and Its Infringing Hop Hunter IPA

16. I have been aware of Sierra Nevada and familiar with their operations in an amicable competitive way for many years. I became aware of the proposed label and packaging designs for the Hop Hunter IPA in late 2014 through, to the best of my recollection, an article on [www.brewbound.com](http://www.brewbound.com). The labels I saw are reflected below:



Figure 7. Proposed Sierra Nevada Label



Figure 8. Proposed Sierra Nevada Neck Label

17. After seeing these labels, I immediately instructed Lagunitas’ attorneys to send a “cease and desist” letter to Sierra Nevada, which was sent on December 5, 2014. (Ex. 2, Cease and Desist Letter dated December 5, 2014.) I personally contacted the CEO of Sierra Nevada, Ken Grossman about that same time. On December 11, lawyers for Sierra Nevada sent a formal response to that cease and desist letter. (Ex. 3, Letter from counsel for Sierra Nevada dated December 11, 2014.) Thereafter, I also personally communicated with Ken Grossman and lawyers for both parties attempted to negotiate an amicable resolution to the issues. When it became apparent that no resolution could be had through those negotiations, Lagunitas filed this lawsuit.

18. Specifically, these Hop Hunter IPA labels use the large, all-capital, bold, black “IPA” lettering in a font selection that is not unlike that of, and is in fact remarkably similar to, the iconic Lagunitas “IPA” brand and family of trademarks. The all capital, large, bold, black



“IPA” lettering in the Hop Hunter IPA design is the central and most prominent feature of the new design—just like the iconic Lagunitas family of IPA trademarks. Moreover, this proposed design includes the kerning between the “P” and the “A” characters that is unique to the Lagunitas family of IPA trademarks, and in the case of the second label shown above (i.e., the “neck” label), the proposed Sierra Nevada “IPA” lettering appears to mimic the “weathered look” that likewise is unique to the Lagunitas “IPA” brand and family of IPA trademarks.

19. I am familiar with Sierra Nevada’s beers, including several of its current and prior IPA offerings, such as Torpedo IPA, Celebration Ale, Snow Wit IPA, Nooner IPA, Blindfold IPA, and Boomerang IPA, some of which are shown below in Figure 9 alongside the proposed Hop Hunter IPA. In my opinion, the label and packaging design for the Hop Hunter IPA is a strong departure from the usual Sierra Nevada branding, and the overall effect of the Hop Hunter IPA label and packaging design is to create, and is specifically intended to create, consumer confusion as to the sponsorship, source, or approval of that product with the Lagunitas IPA.



Figure 9. Traditional Sierra Nevada India Pale Ales compared with proposed Hop Hunter

20. I also am familiar with Sierra Nevada’s extensive history of and reputation for releasing products made in collaboration with other breweries. For example, Sierra Nevada has released collaborations with Dogfish Head Brewery and Russian River Brewing.

21. I also am aware of its heavy promotion of its “Beer Camp Across America” tour of

1 festivals and beer releases to celebrate the opening of their new brewery in North Carolina. Sierra  
 2 Nevada collaborated with 12 other breweries and/or alliances to release a 12-pack of beer where  
 3 each beer was a joint brew created by Sierra Nevada with one of the 12 other breweries. The  
 4 collaborators were: 3 Floyds, Allagash, Ballast Point, Bell's, Cigar City, Firestone Walker, New  
 5 Glarus, Ninkasi, Oskar Blues, Russian River, Victory, and the Ashville Brewers Alliance. On  
 6 information and belief, the "Hoppy Lager" was a collaboration between Sierra Nevada and  
 7 Ballast Point Brewing Company located in San Diego, California that now is being released by  
 8 itself in 6-packs and 12-packs; in other words, it has been changed from part of the Beer Camp  
 9 12-pack to a free-standing product.

10 22. I later reviewed the proposed Hop Hunter IPA 6-pack packaging from the BevMo!  
 11 website. Sierra Nevada incorporates not only the prominent all-capital, bold, black "IPA"  
 12 lettering that appears weathered with its super-imposed image into its proposed design, but that  
 13 design echoes the surrounding hops leaf imagery into its faded green background as does the  
 14 Lagunitas IPA Six-Pack packaging, which is a registered trademark, as seen below:



24 Figure 10. Proposed Sierra Nevada Hop  
 25 Hunter Six-Pack



26 Figure 11. Lagunitas IPA Six-Pack

27 23. In my opinion, the consumer, quickly visiting its local retail outlet's section of  
 28 India Pale Ales, is likely to be confused as to the source of the IPA based on the overall imitation  
 of the Lagunitas IPA 6-Pack packaging.

24 24. In fact, I have been informed by two distributors, who, on information and belief,



1 also are distributors of Sierra Nevada, regarding their concerns over consumer confusion in the  
2 marketplace between the Lagunitas IPA and the Hop Hunter IPA designs.

3 25. Unless Defendant is restrained from offering its infringing “Hop Hunter IPA,”  
4 Lagunitas will suffer immediate and irreparable harm to its goodwill and reputation due to  
5 Defendant’s infringing activities. From the first day, consumers will begin to integrate our  
6 identities and commingle our brands. As explained below, such loss includes loss of market share  
7 that be not be recovered, increased exposure to infringing competition and an erosion of its  
8 intellectual property rights, and an immeasurable blow to Lagunitas’ reputation as a market  
9 leader.

10  
11 I declare under penalty of perjury under the laws of the United States of America that the  
12 foregoing is true and correct based on the information currently available to me and to the best of  
13 my knowledge, and that this declaration was executed at \_\_\_\_\_, California on January  
14 \_\_, 2015.

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17 Tony Magee  
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 8 intellectual property rights, and an immeasurable blow to Lagunitas' reputation as a market  
 9 leader.

10  
 11 I declare under penalty of perjury under the laws of the United States of America that the  
 12 foregoing is true and correct based on the information currently available to me and to the best of  
 13 my knowledge, and that this declaration was executed at Petaluma, California on January  
 14 12 2015.

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